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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

Advanced Television Systems
and their Impact Upon the Existing
Television Broadcast Service

MM DOCKET NO. 87-268

TO: The Commission

CONSOLIDATED REPLY

Rapid Broadcasting Company ("RBC") hereby replies to the Oppositions filed on behalf of the six television stations for which RBC proposed alternative DTV channels in its Petition for Partial Reconsideration filed May 20, 1997. Specifically, the Oppositions at issue were filed by Young Broadcasting, Inc., on behalf of KCLO, Rapid City, South Dakota ("YBI"); Blackstar Communications, Inc., on behalf of KIVV, Lead, South Dakota ("Blackstar"); Duhamel Broadcasting Enterprises, on behalf of KOTA-TV, Rapid City, South Dakota and KHSD-TV, Lead, South Dakota ("Duhamel"); and by South Dakota Board of Directors for Educational Telecommunications, on behalf of KBHE-TV, Rapid City, South Dakota and KPSD-TV, Eagle Butte, South Dakota ("SDETV") (collectively referred to as "Opposers").

INTRODUCTION

As a preliminary matter, all of the Oppositions at issue are untimely and may be dismissed without consideration on that basis. Under FCC Rule § 1.106(g), "oppositions to a petition for reconsideration shall be filed within 10 days after the petition is filed, and shall be served upon petitioner and parties to the proceeding." RBC's Petition was filed

May 20, 1997. Thus, any oppositions should have been filed within ten days thereafter (plus three days for mailing pursuant to FCC Rule § 1.4(h)), or by May 30, 1997. All of the Oppositions specified in the preceding paragraph were filed on July 18, 1997. Since all of these Oppositions (except for YBI) dealt exclusively with RBC's Petition, Opposers cannot argue that they were timely filed within ten days of some other petition to which they may have been responding. Even YBI should have responded to RBC by May 30, 1997. Thus, all of the Oppositions may be dismissed as untimely.

Substantively, the Oppositions are equally deficient. Most of the Opposers take the position that their allotted DTV channels should not be changed in order to accommodate a low power TV broadcaster. Despite the fact that LPTV is generally considered to be of secondary status, there is a fatal flaw in this argument. As pointed out in RBC's Petition, its LPTV stations are not only operational, but constitute the NBC network TV affiliate for the Rapid City TV market. Viewers do not necessarily realize they are watching an LPTV channel or think of that NBC network service as "secondary." Opposers, on the other hand, are trying to protect their hypothetical future DTV channels. While TV viewers in the Rapid City market have become accustomed to watching NBC network TV programs on RBC's assigned channels, there cannot be any arguable viewer loyalty to Opposers' newly allotted DTV channels that have not yet begun broadcasting. Indeed, until the Commission's *Sixth Report and Order* was released a few months ago, Opposers could not have had an expectation for any DTV channel in particular. Thus, Opposers would have a mere expectation created within the last few months supersede established viewer loyalty to NBC

network TV service in the Rapid City market. That proposition is patently absurd and disserves the public interest.

YBI

YBI opposes RBC's proposal to assign Channel 53 in lieu of Channel 16 as KCLO's DTV channel. Although YBI objects to a "high band UHF" DTV channel, band location should not be significant in a digital world. In any event, KCLO is free to begin DTV operations on its current NTSC channel, Channel 15, and to give up Channel 53 if and when that choice has to be made. In stating that "RBC has not shown that it cannot itself easily move its LPTV facilities to other channels," YBI reflects Opposers' insensitivity to established viewer preferences and loyalties to RBC's existing network service. In its greed to lock up *both* Channels 15 and 16, YBI would have RBC's channels displaced. However, there is no reason to displace existing LPTV stations when alternative DTV channels are available, as they are here. LPTV displacement should be limited to those situations where no alternative DTV channels are available.

Blackstar

Blackstar makes much the same arguments as YBI, relying on LPTV's "secondary" status as a rationale for justifying displacement of RBC's NBC network service. When the Commission can avoid LPTV displacement by reassigning only six proposed DTV channels, it is obligated to consider the public interest in maintaining existing LPTV viewer loyalties. Blackstar additionally alleges, without any supporting engineering, that RBC's proposals could create a "daisy chain" effect throughout the DTV table. However, RBC's proposed reallocations were designed to avoid such an effect. Indeed, RBC obtained an

engineering study designed to protect its existing LPTV network service while minimizing changes to the Commission's proposed DTV allotments. The six stations specified in RBC's Petition are the only ones that would be affected by this proposal.

Duhamel

Duhamel bemoans the fact that several of RBC's proposed DTV allotments would fall outside the Commission's core spectrum. However numerous DTV allotments proposed by the Commission would fall outside the core spectrum. The Commission recognized that these stations might be required to move back to their original NTSC channels at some point. Since all of the stations at issue are currently on Channels 3 - 15, there should be no complaint about returning to those channels for digital broadcasts. Indeed, it is quite likely that many of these stations would choose to do exactly that even with the Commission's *current* DTV proposals. For example, it is quite likely that Duhamel would prefer to keep KOTA and KHSD on Channels 3 and 11, respectively, than to move them to Channels 22 and 27 as proposed by the Commission. Additionally, even if a two-step move were required, such an alternative is preferable to displacing the existing network service viewed on RBC's LPTV channels.

SDET

SDET would have the Commission relegate NBC network programming to satellite (*i.e.*, deleted from over the air broadcast channels completely), if required to preserve its existing DTV allotments on Channels 23 (KVHE) and 24 (KPSD). Such a suggestion, which implicitly ranks noncommercial stations above network television, reflects an arrogance that is not supported by Commission precedent or viewer support. Like Blackstar, SDET

also alleges a potential "ripple effect" without any engineering support. However, as previously explained, such fears are unjustified.

CONCLUSION

For the foregoing reasons, and those specified in RBC's Petition for Partial Reconsideration, we hereby request the Commission to partially reconsider its *Sixth Report and Order* in this proceeding to amend the proposed DTV allotments as reflected in RBC's Petition in order to protect RBC's existing NBC network TV service.

Respectfully submitted,

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July 30, 1997

CERTIFICATE OF SERVICE

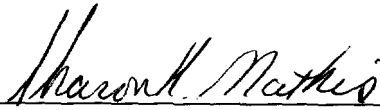
I, Sharon K. Mathis, a secretary with the law firm of Cole, Raywid & Braverman, L.L.P., do hereby certify that copies of the foregoing "Consolidated Reply" were sent via first class, postage prepaid, United States mail, this 30th day of July 1997, to the following:

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